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ABSTRACT

Thirty-seven national Societies of the International League on Mental Retardation provided information on the status of guardianship of the mentally handicapped (MH) in their countries which were variously located in Europe, North America, South America, Asia, Africa and Oceania. Responses covered such topics as the following: countries which have explicit guardianship provisions for the MH, types of guardianship systems, guardianship systems which have a special judge, the function of the national Societies in guardianship, guardianship as a profession, incapacitation procedures, drawbacks of existing systems and prospects for change, and foundations, organizations and specific social groups working on a practical or theoretical level on the guardianship question. Appendixes contained a list of persons responding to the questionnaire, a copy of the questionnaire, a table summarizing data for the U.S., information on the dates of general and special guardianship legislations, a bibliography and a listing of legislative sources on guardianship. (GW)

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REPORT ON GUARDIANSHIP OF THE MENTALLY RETARDED THROUGHOUT THE WORLD

INTERNATIONAL INFORMATION SERVICE ON MENTAL RETARDATION

EC072947

IN COLLABORATION WITH THE INTERNATIONAL LEAGUE OF SOCIETIES FOR THE MENTALLY HANDICAPPED

A STUDY OF THE GUARDIANSHIP OF MENTALLY RETARDED THROUGHOUT THE WORLD

Sponsored by the

FUNDACION BEGOÑA RAVENTOS

Depósito Legal S.S. 70/1975

INTRODUCTION

This study is the first of a series which we might call a collection of enquiries (1) which our Information Service endeavours to carry out on different aspects covering the problems of the handicapped throughout the world. The aim of these studies is to obtain an approximation of the situation of the mentally handicapped and the services devoted to looking after and treating them in different countries in the world, through the opinion of the Societies of the International League, or of people appointed by them, in each case, according to the speciality in question.

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(1) - For the accurate assessment of the results obtained, this "method", which we call "collection of enquiries" should not be confused with that of a survey.

This first time, the questionnaire sent to the National Asscoations has, shall we say, been imposed by this Information Service. The Associations have in other words, taken part in choosing the subject nor in drawing up the - questionnaire, which must be obviated in future studies, - if we wish to tackle the most urgent problems and obtain - positive results.

This time, we have attempted no more than an experimental study which did not call for too much time or work simply to as certain its effectiveness, and to tackle subsequent studies more carefully -when their interest and feasibility has been verified- (starting by choosing the subject for study) and carrying them out more methodically.

These pages are, therefore, by way of an experiment which we place in the reader's hands for him to judge. According to his opinion, which we hope to receive in the - Information Service, we shall study the advisability of undertaking further studies and the best way of carrying them out, naturally always in keeping with the means we have at out disposal.

Guardianship of the mentally retarded: methology, aims and scope of the work

This subjetc (guardianship systems throughout - the world) was chosen due to the fact that in the short -

time the Service has been in existence, the largest number of requests for information have been regarding legislative questions and among these, the majority referred to guardianship. On this basis, we drew up a questionnaire with the basic idea in mind, that it should be easy and simple, so that it would not be difficult to complete and so that we could obtain some results or, we might say, answers to the questions asked, which were practical that is, direct, brief and simple, although we realized the danger of our falling into over-sketchiness.

This work cannot therefore be considered a classical survey of compared legislation, but simply the answer, not very objective in many cases, if we are to be sincere, to very simple questions (simple in the way they were asked, we mean, but which often could not be answered with the same simplicity) which many people have asked us: "Are there countries in which there exists the figure of a professional guardian?"; "In what countries does curatorship exist?", etc.

We believe that the results obtained can be of use in replying to some questions of this type and that they will assist people interested in acquainting themselves with guardianship questions to channel their interest in a particular direction (a specific country, for example, or a particular guardian figure). Also, although in a very simplified way, specialists who intend carrying out a tru-

ly comparative survey in future, will have a base on which to build. In any event, we hope to set forth, in these pages, the interest which makes it worth while compiling them, to assist people and institutions who are responsible for and interested in seeking the most suitable solution in each country for adequate and just legal and material protection of the handicapped.

The questionnaire (see Appendix N°2) was sent as from April 1973 to 63 full member and affiliated Societies, requesting them to complete it, or forward it to the most suitable person in their country for doing this type of work.

Scope of the Survey

Of the 63 Societies to whom the questionnaire was sent, we have received a reply in 37 cases, often accompanied by the legislative material necessary to complete answers and which we have included in an appendix, as we feel that it may prove interesting reading for people who wish to go further into the subject.

All in all, with the completed questionnaires, - the explanations and comments which have been sent us by - people who took the trouble and responsibility of fillind them in, and the legislative material which in certain cases they have contributed, we have been able to study the question in the following countries:

Countries included in the survey

Europe

. Spain	. Scotland	. Holland	. Ireland
. France	. Belgium	. Portugal	. United Kingdom
. Germany	. Luxemburg	. Monaco	. Sweden
. Denmark			

North America

. Mexico	. Canada	. United States

South America

. Argentina	. Columbia	. Chile
. Equador	. Costa Rica	. Peru
. Venezuela	. Dominican Republic	

Asia

. Ceylon	. Pakistan	. Indonesia
. China H.K.	. India	. Israel

Africa

. Tunisia	. Morocco	. Mauritius I.
. Madagascar	. Ghana	

Oceania

. Australia	. New Zealand

So, in principal, we have not sought representation a world scale, but have simply tried to obtain an answer from the largest possible number of countries, in order to have maximum references. We cannot, therefore, say, in any way, that the situation we have detected in Asia, the features of guardian institutions there, for example, represent on the whole the situation in that continent. On the other hand, on a world scale, it is obvious that there is great disproportion in the degree of participation of the different continents.

It should also be borne in mind that the questionnaire contains questions shich may be considered matters of opinion which in many cases have been replied to by a single person who, logically, cannot avoid being subjective, to a greater or lesser extent, when drawing up his replies.

On the other hand, in certain questions, the profession of the people who have intervened in drawing up the replies can influence same to a considerable extent, and even more so, the category of the State official or member of pressure groups, etc., in the critical nature of these answers (2). Despite this, we think that these difficulties, which we have foreseen in advance, do not diminish the value of the work, although they may detract "scientific validity".

To sum up, we can say that, in order to carry out this work, we have seized the opportunity to rely on groups of people -the Societies- spread all over the world, well acquainted with aspects of mental deficiency and the guardianship problem in particular, in their respective countries,

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(2) - The fact, for example, that a person is a judge or psychiatrist, can influence in a different way when judging the validity of the staff of the guardian judge.

who are therefore capable of replying, with a minimum of objectivity, we are sure, to the questions posed in the questionnaire, or who know the people, bodies or institutions - who are most suitable for duly performing this work. In this way, we think we shall be able to glean an impression of some of the most important features of the guardianship set-up in 37 countries in the world.

Let us now analyze the results briefly.

SPECIFIC GUARDIANSHIP FOR THE MENTALLY RETARDED

From every angle "guardianship is still an instrument with serious intrinsic limitations". Although the existence of specific legislation for the mentally retarded appears theoretically to go against the principle of standardization, there is no doubt that, from another point of view, in a type of guardianship which looks on the handicapped as a "special" subject, determinations can be introduced -- which affect a type differentiation and in the last instance a more coherent and rational application of restrictive measures. What is the line followed in the countries consulted?.

Of the 37 countries, only 6 have specific guardianship for the mentally retarded: Argentina, Denmark, Belgi

um, France, the United Kingdom and USA (3).

The people who completed the questionnaire in this last country said that "the special legislation dealing with the mentally deficient in the United States was promulgated on a state-by-state basis. There is no comprehensive Federal legislation dealing with the mentally deficient. Therefore, there is very little uniformity among the many jurisdictions of the United States. It should be noted here that in many - jurisdictions this special legislation goes well beyond the realm of guardianship law. Encompassed in many jurisdictions are commitment, psychological treatment and hospitalization of the mentally deficient".

In all events, it is clear that the United States must be included in countries having special legislation regarding guardianship since only the District of Columbia and the Pacific Islands do not have this special legislation.

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(3) - We have already alluded to the difficulty of giving - an overall reply in the case of the federated and confederated states where the situation often varies from one state to another. In the particular case of the - USA, we include, in Appendix N°3, a table drawn up by the people who have completed the questionnaire in -- which the replies can be seen applied to the case of each state.

The date of modification of general rules or regulations applicable especially to the handicapped is very recent in Belgium (1973), France and Argentina (1968), and a decade earlier (1959) in Denmark and the United Kingdom. The legislation of the USA states is older, that of Illinois dates back to 1940, Alabama, to the same year, Minnesota (1935), "Canal Zone" (1934), California (1931), and Montana, the oldest, dates back to 1921. However Belgium (although in this country it would have been almost impossible), France, Argentina, Denmark and the United Kingdom, have introduced no subsequent modification in their laws, whereas nearly all the American states have done so, which means that on the whole, their legislation is probably younger than the European (see dates in Appendix N°3).

General guardianship regulations are, generally speaking, very old (see Appendix N°4) and apparently in some cases have not been modified, this is the case of the Dominican Republic, Venezuela, Sweden, Tunisia, Marocco, India, or the modification is also somewhat old: Spain (1958), Costa Rica (1952), Venezuela (1949), Mauritius I. (1906), Luxemburg (1880). In all events, modification took place prior to the present concept of the problem of the handicapped in all its aspects, including the legal one. However, it is important to point out that in many countries the modification introduced in the general regulations is suficiently recent for general regulations to have been provided in the case of the handicapped: Ecuador (1970), Peru (1969-73), Germany (1969), Holland (1970), Scotland (1968), Israel (1970), from

this we presume that in these countries the possibility of applying was explicitly dismissed special guardianship legislation for the handicapped.

Those who take part in drawing up legislation specifically applicable to the handicapped

Returning to the countries which have special legislation regarding guardianship, it is interesting to define who took part in preparing it. For this reason, we included the following question in the questionnaire: "When making modifications or adjusting general regulations for special application to the handicapped, was the opinion of the parents of the handicapped and/or their societies, lawyers, judges, social workers or other types of professionals called for?".

In this respect, the USA gives a very detailed account of the question, when they say: " In answering this - question, it is important to recognize that much of the legislation enacted within the United States is done after encouragement from various political factions. This is not to say that much of the legislative effort is not spontaneous, but does recognize the reality that unless there is a purpor

ting political faction desiring the particular legislation, it does not occur.

It is impossible to speak for all 55 jurisdictions as to whom is consulted upon the institution of legislation. Certainly parents of the mentally handicapped persons and associations representing the mentally handicapped are consulted or have an opportunity for input in the course of creating such regulations, but there is usually no formal mechanism by which parents, associations, etc. can be assured that their suggestions will be incorporated into the law. Most of the legislative bodies within the United States are comprised of lawyers themselves. Lawyers play an integral role in the creation of any legislation. However, lawyers as advocates for the mentally handicapped have traditionally played a minor role in the creation of legislation. This role is expanding rapidly as such groups as NCLH are created to advocate the rights of all handicapped people. Judges have typically played no role. Expanding the area of social workers to include all mental health professionals, it can be said with some confidence that they play an important role in the creation of legislation. Perhaps it is this lack of uniformity of professional opinions given which is reflected in many of the differing state statutes".

That is to say, that we now encounter the question of formal or informal participation and of the nature of the channels of participation. Apparently in remaining countries

which have answered this question, only in Argentina did the Societies not participate in drawing up the law, whereas in France, Denmark, the United Kingdom and Belgium, they were - at least consulted (in the latter country, for example, we - were told that the law was promulgated at the request of the Society). The participation of judges however cannot be said to be very active. as they are only quoted by Argentina. On the other hand, social workers and lawyers seem to play an - important role (only France omits to quote the latter). Finally, Denmark and Belgium recognise the role played by doctors.

In the survey, we did not ask about the real possibilities of the Societies' participating in legislative power, but it would be fair to ask whether there could be any type of relation between this possibility and the existence of specific guardianship legislation for the mentally retarded.

Degree of participation by the family and the State in guardianship bodies

We have also attempted to determine to what degree the family and the State participate practically in guardianship bodies. Most of the countries consulted, 13, assure that

both participate actively: India, Tunisia, Ghana, New Zealand, USA, Ecuador, Venezuela, Portugal, Monaco, Germany, Denmark, Luxemburg and France. Whereas in only one country, Mexico, - both participations can be considered an negligible, although a very similar situation applies to Ceylon, Israel and Mauritius I. (they all participate little and indirectly), and Pakistan and Holland (slight State participation and none by - the family).

In intermediate situations, we have the case of Madagascar, Spain, Argentina, the Dominican Republic and Sweden, in which whereas the family participates actively, the State does so to a minimal extent and indirectly. On the -- other hand, there is active State participation and both minimal and indirect family participation in Hong Kong, Columbia, Peru, and the United Kingdom and none in Marocco (4) - or Australia.

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(4) - The institution of the Family Board, as it exists in - European legislations, is not provided for by Moroccan law in so far as Mohammedans are concerned. However, a consultative body has been povided by such law: the -- "consultative Committee" assists the "Cadi" (judge) in this attributions concerning the protection of the handicapped. This Committee, presided over by the "Cadi" (judge) also includes a representative of the public - ministry and two reputable persons. The family must no form part of this committee, but the guardian and the people concerned attend the Committee meetings.

It is not difficult therefore to conclude that usually active participations occur jointly, that is, that with active State participation, there is also active family participation and vice versa, and that, consequently, comparing the participation of both institution, it cannot be said that the participation of one exceeds that of the other in any significant way.

DIFFERENT GUARDIANSHIP SYSTEMS

This time we have endeavoured to determine the different guardianship systems in force in each country. We do not claim to be carrying out a through analysis of these systems, we wish rather, to find out the extent of their validity in order to guide people who are interested in carrying - out a specific survey of any particular system.

Of the countries which have special legislation regarding guardianship, only Denmark and the United Kigdom are without a variation from the guardianship system as such. On the other hand, countries which have no specific system for the handicapped, have one or more systems, apart from the actual guardianship system.

The countries which have only the guardianship system as such are: Spain, Columbia, Mexico, Luxemburg, Denmark, the United Kingdom, Ireland, Pakistan, Indonesia, India, Hong Kong, Israel, Tunisia, Marocco, Madagascar, Ghana, Australia (5), and New Zealand, that is, about half the countries consulted.

It is worth while mentioning that the countries quoted are very far from forming a homogeneous whole, whatever the aspect in which we define them, which means that the existence or otherwise of another guardianship system, apart from guardianship as such, does not seem to depend on factors which can be recognised at first sight.

Other countries (that is those which have some other system) more often than not have only one more system and this system is usually curatorship (6): Venezuela, Ecuador (7), Portugal, Monaco, Germany, Holland, Scotland, Ceylon --

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(5) - In the case of Australia, we have seen an indirect allusion to the curator in the State of Southern Australia.

(6) - Curatorship: a regime of slight protection which calls for the assistance of the curator only for certain acts.

(7) - In Ecuador there is testamentary, legitimate and dative curatorship.

and Mauritius I. and, alongside another system it exists also in France, the USA (not in some States, see Appendix N° 3) and Sweden.

Other systems are of little importance in proportion, naturally, to the countries in which they are in - force. France is the country which has most systems; apart from guardianship and curatorship, it has "Sauvegarde de la justice" (8), "La Gérance de Tutelle" (9) and "Administration légale" (10), solutions which at least when we speak - of the countries consulted, are practically exclusive to -- France.

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(8) - "Sauvegarde de Justice": slight provision for protection in the sphere of a suitable decision.

(9) - Once guardianship is open, the judge can restrict himself to appointing a guardianship manager (without family board or guardian) since the complete constitu-- tion of guardianship to be of no use, is declared taking into account the amount of the assets to be looked after.

(10) -"Administration légale": This is family guardianship - which is controlled only by the Guardianship judge (without family board or proguardian).

Prolonged minority has very recently been established in Belgium (law of 29th June 1973). This is a system which has, for a long time, been considered as the most suitable, but which apparently has recently been criticised since, at least nominally, it qualifies the mentally retarded person as a "perpetual minor"; as is well known, this idea has become somwhat discredited in current literature.- According to our Belgian correspondent, "The provisional administration" which was previously fully in force, has been overruled since the law of 29th June 1973. The Justice of the Peace could, at the family's request and after consulting the family board, appoint a provisional administrator of the assets of a person "forcibly confined to his home" or "placed" in a psychiatric institute. "Confinement to the home" or "placing" in a psychiatric institution are measures of a purely administrative nature, which in principle have no consequence regarding the legal capacity of the mentally sick person. These measures are, in principle, reserved solely for the mentally sick. But to achieve certain protective measures, they were also applied to the mentally retarded. We are now endeavouring to abolish these measures as we consider what they deprive the individual of his liberty".

In all events, the interdiction system still remains in force in Belgium, especially for the mentally sick - and also for the mentally retarded not included in the application of the "prolonged minority" law.

"This prohibition tends especially to protect families against dilapidation of the subject's fortune. The - procedure is costly, and not very common. Interdiction can, however, be requested if the régime of the law of 29th June 1973 can not be applied to a mentally handicapped person".

Regarding confinement in the home and "placing" in a psychiatric institution, measures of which we have already made mention, we are told that they are "administrative measures for depriving liberty directed towards protecting the mentally sick and society. The patient has to be dangerous or to be in danger himself. In principle, it has no legal consequence.

Before the law of 29th June 1973, this régime was also applied to the mentally retarded, most often for reasons of a purely social nature (loans). The "confinement - to the home" was under the judge's control, or to be more exact, the judge controlled whether the "person in confinement" was well looked after. The judge authorized work in a sheltered workshop, samll errands, etc.

Since 1964, "confinement to the home" (or "placing" in an institution) could, at the family's request, have legal consequences: the appointment by the judge, after consulting the family board, of a provisional administrator of the assets. This administrator had similar functions to those of a guardian. He could accept fees (quantity fixed by the judge) but in 99% of cases he was (for cases of people forcibly confined to the home) a benevolent assistant, nearly always the father or mother, a brother or sister, etc. - Every three years he had to report on his action".

Regarding the so-called "citizen advocacy" system (11), so widely discussed in recent years, we can say that

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(11) - According to Professor Wolfenberger of the National - Canadian Institute for Mental Deficiency, citizen advocacy could be defined as follows:

"A mature, competent citizen volunteer representing as if they were his own, the interests of another citizen who is impaired in his instrumental competency, or who has major expressive needs which are unmet and which are likely to remain unmet without special intervention.

For lack of a better term, and especially to avoid use of the term "ward", I shall refer to the impaired person in an advocacy relationship as a "protege".

Neither agencies nor professionals should protect - the handicapped person. Protection should be exercised by a competent and suitable person. Protectors - can act alone or in groups and represent the interests of people or groups. However, the importance of citizen advocacy lies in its individual nature, in which one person protects another".

it has been put into practice in Canada, USA and Sweden (in an experimental stage). It only remains for us to point out that in the Dominican Republic, although the name is not -- quoted, "there is the appointment of a legal advisor for people who, without being in a regular state of imbecility, - mental derangement or madness, are incapable of administering their assets alone". We have already mentioned this idea in another system and it must be very similar to the notion of "conservator" in the USA which although a synonym of "custodian" in some cases, coexists alongside guardianship and - curatorship in most states.

Summing up, we can therefore say that the countries in which another system exists apart from that of guardianship -about half those consulted- seek preferably a formula for reducing the rigidity of the guardianship system as such, although it must also besaid that they are more concerned - about caring for assets than about caring for the actual person.

Custody of assets, custody of people

With reference to the problem we have just mentioned, namely preponderance of custody of assets over the cus

tody of the person, we have tried to determine what difference exists between both systems of custody or care. The results have not been very satisfactory since the question is difficult to reply to briefly and in many cases calls for thorough analysis of legislations in force. In all events, we think it will be of interest to set forth the statements of the people asked, most of which follow the line mentioned, that is, they state that guardianship is usually considered from the point of view of care, custody or protection of assets belonging to a person unable to administer them. Let us therefore see these remarks:

. Spain: The Spanish reply is most explicit. To our question in which we asked to be explained briefly the difference existing in the country between the systems for custody of assets and of the person, the reply was as follows: "None, as guardianship covers both aspects or only one, that of assets, as in the cases of prodigals and of subjects to interdiction, except that in the latter, representation in a trial -though care is minimal- is also taken care of".

. France: Their reply is no less clear when they say: "the law of 3rd July does not protect the person except through his assets, but not regarding the individual from --

the penal point of view".

. Monaco: "Both are under the control of the guardianship judge, but a range of measures exists regarding the protection of assets".

. Sweden: "Guardianship takes care mainly of the protected person's income and fortune. The guardian administers the fortune and is responsible before the head guardian, who is chosen by the Municipality. The guardian's fees are paid from the protected person's income. (Frequently a pension for incapacity). He receives no remuneration for any other service he might render".

. Morocco: "Moroccan legal provisions deal essentially with the protection of assets".

. Madagascar: "Protection of the individual is only noted indirectly, whilst protection of assets is the object of more precise regulations".

. Canada: "The Mental Health Act provides the means by which the financial interests of the mentally deficient can be protected. The protection of assets can, up to a certain point, be a measure of personal protection. Nevertheless, those who have no assets are at a disadvatage as they receive no formal protection".

. U.S.A.: "There is very little difference in the United States between the custody of assets and the guardianship of individuals. The most surprising difference lies in the fact that the guardian of assets has more responsability for the assets than the individual responsible for his custody has for the person.

THE GUARDIANSHIP JUDGE

GUARDIANSHIP SYSTEMS WHICH HAVE A SPECIAL JUDGE

We are now going to look at countries which have a guardianship judge, a specialized full-time judge devoted exclusively to the guardianship question. We shall also analyse aspects related with the role of the judge and in particular those which affect his advice.

The countries which have a guardianship judge are as follows: Argentina, Costa Rica, Peru, Portugal, France, Belgium, Monaco, Germany, Hong Kong and Tunisia, that is, considerably less than half those consulted. On the other hand the following countries have no full-time judge devo-

ted exclusively to the question of guardianship: Spain, Columbia, Chile, Ecuador, Mexico, Dominican Republic, Venezuela, Luxemburg, Sweden, Denmark, Holland, the United Kingdom, Ireland, Scotland, Ceylon, Pakistan, Indonesia, India, Israel, Morocco, Mauritius I., Madagascar, Ghana, Australia, New Zealand, Canada and the USA. It should be pointed out that in the case of Morocco, in the large towns, the "Cadi taoutig" (juge du notariat) has general attributions concerning protection of the handicapped which are very important, although not exclusive; outside the large towns, these attributions belong to the "Cadi" (juge de statut personnel). On the other hand, in the USA "it should be said that although there are no judges or courts devoted fully and exclusively to the guardianship of the mentally handicapped the judge of each respective jurisdiction has exclusive control of the matter, though he exercises it in addition to his many other responsabilities.

Means at the disposal of the guardianship judge

But although it is so important that there exist a judge fully devoted to exercising this magistracy as a guardianship judge, it is equally important that he be sufficiently informed and advised, especially if we take into account

the large number of specific questions he has to deal with and decide upon and that furthermore he has to supervise - or watch over the correct enforcement of each guardianship. In the questionnaire we asked precisely whether the judge had "sufficient means and advice to watch over the adequate enforcement of the guardianship" and we left three reply possibilities:

- . YES, he does have sufficient means and advice.
- . Although he does NOT have sufficient means and advice, neither can it be said that he lacks - them completely.
- . He is lacks completely means and advice.

Of the countries which have a guardianship judge, exactly half: Costa Rica, Belgium, Monaco, Germany and Hong Kong have, in the opinion of the people who completed the - questionnaire, sufficient means and advice; the remainder, except France, that is, Argentina, Peru, Portugal and Tunisia, assure that, although they have not sufficient means - and advice, neither can it be said that they lack them completely, and finally France maintains that the judge lacks completely means and advice.

Regarding countries which have no guardianship jud

ge, the panorama is obviously worse, although the relative - difference is not very great, for only Mexico and Denmark -- complain like France that the judge completely lacks means - and advice. However, in this case, much less than half the - countries give the best reply (that the judge has sufficient means and advice): Holland, the United Kingdom, Scotland and Ghana, while the majority: Spain, Ecuador, Venezuela, Ceylon, Pakistan, Morocco, Mauritius I., Madagascar, India and the - USA are of the opinion that although the judge does not have sufficient means, neither does he completely lack them. Columbia, Chile, the Dominican Republic, Luxemburg, Sweden Ireland, Indonesia, Israel and Canada did not reply to this question.

We can therefore say that the general tendency is - that in the countries where guardianship judges exist, they - also have better means and advice.

Before going on to another question, we should like to stress what we have already said about the subjectivism - which may bias certain questions. In all events, the general panorama we have described regarding the advice and means -- with which the judges are provided cannot be very far from - true . On the other hand, what may really have had a more direct influence on possible bias in replies is the requirement level of each country and this compared to whether or not the

re exist other more urgent needs. This is a fact which could lead to a certain extent to the "correcting" or "compensating" of data with reality, rather than actually deforming it.

The question we asked inmmediately after the one - above enables a more objective study to be made of the same question, in those cases where we were told that in that country the judge did not at least completely lack means and advice to watch over the correct execution of guardianship. The - exact question was: "What are those means and what does that advice consist of? To begin with, the United Kingdom and Costa Rica, who in the previous question had replied that the - judge had sufficient means and advice, did not describe to us exactly what those means and that advice were, and the same - thing happened in the case of Australia, which was of the opinion that it could not be said that in that country the judge completely lacked means.

The rest of the replies can be divised into three - big groups:

. In the first (with a greater or lesser margin of error) we - could classify the countries which quote the actual guardianship bodies or concerns belonging to the juridical-legal system which, although in some cases, they may play the role of supervisers, are much less likely to fulfill that of technical advisers. This is the case of: Spain, India, Portugal, -

Ceylon, Pakistan, Tunisia, Morocco (12), Mauritius I. and the USA (13), within the group which considered that the judge's means and advice were, if not non-existent, at least insufficient, and Holland (14), Belgium and Scotland were among those who considered them satisfactory or sufficient.

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(12) - We believe it is worth while transcribing integrally the explanation which Morocco gives of the procedure in force, to our question on the means and advice at the judge's disposal. It reads as follows: "The judge convenes the "consultative committee" over which he presides; this committee is made up of a representative of the public ministry (substitute of the attorney) and two honorary personages, well-known for their interest in the handicapped; the "judge" can only decide after taking into account the opinion of this committee on the case which has been submitted to it and after and enquiry made among the members of the family".

(13) - We have included the case of the USA in this group, although not without reservation. Indeed, the people completing the questionnaire specify that: "It would be impossible to determine to what extent the probate court judge is advised while guardianship is being arranged, the judge has the opportunity of seeking advice from two representatives of the court. On the other hand, the legal defence, as for example the "national Center for Law and the Handicapped" furnishes the court information as "amicus curiae".

(14) - We also have our doubts in the case of Holland. So that the reader can judge for himself, we transcribe the exact reply issued by this country's correspon-

. In a second group we would include the cases in which we - were told more definitely of social visitors, home inspectors, welfare officers, etc. That is, cases in which it is assumed that the judge relies on a professional team entrusted with following up cases which are under the guardianship procedure. We have included Madagascar, Argentina, Ecuador and Peru in this group among the countries which consider - advice not negligible but insufficient, and Hong Kong, Ghana and New Zealand among those who considered it sufficient.

. We include in the third group those who mention social services and specific competent bodies, such as Monaco and Germany, both countries which considered the means and advice at the judge's disposal sufficient.

(...) - dent:

"1 - Reports by the person appointed as guardian.

2 - Advice of the parents, family and agencias specialized in Social Work for the mentally retarded"and - the following is added as a note: "Although this aid is available, most judges do not avail themselves of it".

There is a more definite question which can help - us to determine more accurately the means at the judge's disposal. It seems logical that to duly perform his functions, the judge should require a staff of professionals from whom he can ask advice and technical consultation when he so needs it, or to whom he can entrust the supervision and vigilance of how the guardianship is being carried out. There - are countries where apparently the judge does have this staff: Hong Kong, Costa Rica, Portugal and Germany have it at the - special judge's disposal, and Ecuador, Denmark, Holland (15), Pakistan and New Zealand have it at the ordinary judge's disposal; they are all countries, except for Denmark, in which - it is considered that the judge even at worst, does not completely lack means and advice.

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(15) - According to our correspondent, "Currently, the ordinary judge depends on the so-called "Council for Child Welfare", which take care of the more needy (under 21). For adults over 21, guardianship is not applied. For - curatorship there is unofficial control by the organization over the care of the mentally retarded.

THE FUNCTION OF THE SOCIETIES

Participation of the Societies

Much has been spoken about the fact that the "ultimate vocation" of the Societies for the mentally handicapped is closely related with the problems of guardianship. On the other hand, it seems logical that the Societies in so far as they represent the handicapped and their families should have a great deal to say from the source of legislation, concerning this subject, that they should express their opinion regarding its better application and later take care to watch - over the exact circumstances of any handicapped subjected to a guardianship procedure, unless they are exercising or delegating the actual guardianship.

Let us see two points concerning the degree of the Society's participation in the guardianship question. The - first relates to the aspect dealt with previously, means and advice of judges and the Societies' possibilities of partici pation.

Societies' cooperation with the judge

The question we asked was the following: How do the Societies cooperate with the judge and/or the staff if there is any?. France, Hong Kong, New Zealand and the USA, that is a very small proportion -about ten per cent- of the countries consulted, answer in the affirmative. Together with these, - Tunisia, Madagascar, Australia, Argentina, Peru, Belgium, In dia, Germany and the United Kingdom assure that there is coo peration, but not very close, and, finally those which state that there is no type of cooperation are: Spain, Costa Rica, Chile, Ecuador, Mexico, Venezuela, Portugal, Monaco, Denmark, Holland, Scotland, Ceylon, Pakistan, Indonesia, Morocco, Mau ritius I., that is, almost half the countries who completed - the questionnaire.

We think it is no exaggeration to state that the - balance sheet is very negative, as judicial power too frequen

tly loses an efficient source of guardianship supervision, - as well as the possibility of relying on an experienced consultative means.

The Societies and the exercise of guardianship

Without going into the question as to whether the exercise of guardianship through the Societies, either in a delegated fashion or directly, is the best or not, and also convinced that under the best conditions, guardianship exercised individually is preferible to that of a group, we are going to focus our attention on one concrete fact; on the - legal impossibility with which many Societies are faced, due to the fact that as a body corporate, they cannot exercise - the function of guardians. Let us see the countries which are covered by this case. They are the following: Spain, Argentina, Costa Rica, Chile, Ecuador, Mexico, the Dominican Republic, Venezuela, Belgium, Luxemburg, Monaco, Sweden, Denmark, Holland, the United Kingdom, India, Ireland, Scotland, Ceylon, Pakistan, Tunisia, Morocco, Mauritius I., New Zealand and Canada. That is, that approximately two-thirds of the countries consulted face a legal impediment to their exercising the function of guardians of a handicapped person. However, this question poses no problem legally speaking of course, in Israel, - Madagascar, Ghana, the USA, Peru, Portugal, France and Germany. Unfortunately, we have not been able to determine the question for Columbia, Indonesia, Hong Kong or Australia.

GUARDIANSHIP AS A PROFESSION

We are now going to deal with the subject of guardianship exercised as a profession. It might not be amiss to point out here the danger of confusing the professional guardian, that is, the person who professionally exercises guardianship over the person and assets of one or more mentally retarded people, with the much more commonly encountered figure of the administrator of assets who usually acts professionally. It is possible that the people who have completed the questionnaires have had some difficulty when filling in the questions concerned with this subject, since in practice the real action of an administrator and of a guardian can differ much less tan they might seem to in theory.

According to our correspondents, the countries which have professional guardians are as follows: Pakistan, Tunisia,

Holland, Scotland and New Zealand. We believe it will be interesting to give further information, since we have the possibility of doing so, regarding these last two countries. - "A guardianship petition", says the person filling in the questionnaire in Scotland, giving further details, "can be made - to the nearest relative. The local authority can be appointed when the family of the mentally handicapped person considers itself unable to attend adequately to him or when a court considers that this form of sentence is preferible to that of - arrest.

"When guardianship is submitted to the local authority, the Social Work Department becomes responsible for supervision and in Individualized Social Work the social worker becomes directly responsible, although the degree of responsability may vary from time to time. Social workers are - paid by the local authorities -the municipality or the regional authority-.

"All formal guardianship petitions are recorded in the Mental Welfare Commission in Edinburgh. Their officials are doctors and their duty is to visit the handicapped people concerned periodically, and they are State-paid.

"When the guardian is the nearest relative, State - benefits can be claimed on behalf of the mentally handicapped person".

In turn, the New Zealand correspondent added that: "the only legally recognized advocates in New Zealand are -- the Public Trustees, a society established to administer the assets of deceased or sick people who have not indicated a - guardian, and five companies which have to abide by strict - legal formalities to be able to act as judge in this type of matters.

"These professional guardians, although they are - responsible for taking an interest in the physical wellbeing of their protegés, are not responsible for having any priva- te discussion with those who are under their guardianship -- and try to settle, through the council of the relative nearest to hand, visiting them regularly, any particular neeed of tho se protegés and the type of guardianship desired. The guardi- an is rather more devoted to the administration and protecti- on of the assets of the handicapped person.

If there are no relatives nearby and there is no - regular contact with those who are under the guardian's care, then the latter asks for advice from the Hospital Superinten- dent regarding the physicial well-being requirements of the - person protected. For this reason, the New Zealand Society -- has created the Trusteeship Scheme, for which we propose to - obtain official legal recognition".

Guardianship considered as a profession and exerci sed over a certain number of handicapped people should, in -

our opinion, require a certain degree of specialization. To find out whether this specialization exists, we drew up the following question to put to countries which have professio nal guardians: "Often the term "professional" is not necessarily synonymous to "specialized", and therefore we ask you: "Is there any type of specific training, in your country, for those who exercise guardianship professionally?".

Scotland and Holland replied in the negative, that is, assuring that in their respective countries the exercising of guardianship on a professional level does not require any particular specialization. In this respect, Holland specifies very clearly that "either social workers or officials of the Mental Welfare Commission can be classified as professional guardians. Regarding specialization, however, we ought to point out that this does not exist, as the training of social workers is carried out on a basis of family attention and although some might be specialized in mental deficiency, most are simply welfare workers in general". New Zealand, for her part, claims that her professional guardians possess specific training, so also does Tunisia, who furthermore indicates that of "guardianship judge" as the required specialization. This last fact has led us to ask ourselves -- whether in Tunisia a guardianship judge can at the same time act as guardian or whther there are people with training on a magistracy level who act only as guardians. Unfortunately, we cannot provide an answer to this question.

Another problem is that of professional guardians' retribution. To what fund are their fees charged?. All countries quote the State as the financial source and in the case of Holland and Scotland (16), the Municipality too, which seems to show that handicapped people lacking means can also achieve guardianship through a professional. However, Pakistan and New Zealand mention the family, apart from the State, as one of the means of financing the guardian.

Logically, in cases where the guardian is remunerated from public funds only (Holland, Scotland, Tunisia), his fees are entirely unrelated to the ward's finances and the opposite occurs (Pakistan, New Zealand) when these fees are paid by the family.

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(16) - It is interesting to point out the remark which Scotland makes on the subject, and which might be extended to other countries: "I should say that the guardian should be remunerated either by the State or by the Municipality. I should point out that the Mental Welfare Commission is better than a professional guardian of a Mentally Handicapped person".

INCAPACITATION PROCEDURE

Incapacitation procedure and the prospects of modifying current guardianship systems

As we all know, before submitting a handicapped person to the guardianship procedure as such, his incapacity has to be declared. Although there are what we might call informal guardianships, which can be exercised without need for any such declaration, there is no doubt that there are many serious legal problems which can confront the non incapacitated adult, especially in countries in which the bureaucratic system is not prepared to handle unforeseen events with certain flexibility. Although one of the most important problems of parents is the future protection of the handicapped person when they themselves are no longer able to look after them, it is logical that in many cases, and the more so when there

is no problem of bequeathing assets, petitions for declaration of incapacity are gradually postponed.

Through our enquiries we have indeed been able to see this "postponing" to which we have alluded, as almost - half the countries assure that there are very few mentally handicapped people subjected to guardianship. Namely: Argentina, Costa Rica, the Dominican Republic, Peru, Venezuela, India, France, Belgium, Luxemburg, Sweden, Holland, the United Kingdom, Scotland, Pakistan, Israel, Madagascar and Canada (17).

Going into the matter a little further, the following countries say that there are few mentally handicapped people subjected to guardianship procedure: Spain, Ecuador, Monaco, Denmark, Germany, Ceylon, Tunisia, Australia and the USA.

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(17) - Regarding this question, we have received the following specifications: Belgium points out that with the application of the law of 29th June 1973 which lays down prolonged minority, the number will quickly grow. Sweden makes the distinction between what we might - call legal guardianship and effective guardianship: - "A person who has a guardian may need a "citizen advocate", as if the guardian had nothing to do with the personal problems of the ward. And a person may require the services of a citizen advocate even though he may need no guardian. Canada on the other hand points out that "citizen advocacy" is an informal agreement, not recognised by law.

New Zealand, on the other hand, claims that in that country they are nearly all subjected to it and the same goes for Columbia, Portugal, Ireland, Mauritius I. and Ghana. Morocco, for its part, states that approximately half of the country's handicapped persons are incapacitated and subject to -- the guardianship procedure. It goes without saying that the - proportions given are quite approximate and are simply based on the knowledge and experience of the person giving his opinion.

On the financial side of the procedure, the majority believe that in their respective countries, it is cheap: - Argentina, Ecuador, Portugal, Monaco, Sweden, Denmark, Germany, Scotland, Israel (18) and Madagascar. Then there follow - those which say it is neither expensive nor cheap: Spain, Costa Rica, the Dominican Republic, Peru, Venezuela, France and the USA. Finally, the extreme cases: the following say that - it is expensive: Columbia, Luxemburg, Holland, Ceylon, Pakistan, India, Mauritius I. and Canada, and it is free in: the - United Kigdom, Hong Kong, Morocco, Ghana and New Zealand. The case of Belgium is somewhat more complicated since apparently the procedure is expensive in the case of "interdiction", cheap in that of "prolonged minority" and free in the case of -- "administration provisoire".

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(18) - Although apparently there are good prospects that it will become free.

Analyzing another factor, the length of the process, posibilities are more divided. Indeed, the following countries consider that the procedure is very slow: Columbia, India, Mauritius I., Canada and Luxemburg; that it is rather slow: - Costa Rica, Ecuador, the Dominican Republic, Peru, France, -- Germany, Ceylon, Pakistan and Madagascar. On the other hand, those who think that the procedure is relatively fast, are:-- Spain, Argentina, Venezuela, Denmark, Holland, Hong Kong, Israel, Morocco, Ghana and the USA, and that it is quick: Portugal, Monaco, Sweden, Great Britain, Scotland and New Zealand. In the case of Belgium, the "interdiction" procedure seems to be very slow, and that of "administration provisoire" quick. The comparison to be drawn from the analysis of another factor, the complexity of the procedure, is very similar. Indeed, the incapacity declaration procedure is complicated in Ecuador, the Dominican Republic, Luxemburg, Mauritius I., Australia and Canada; quite complicated in Mexico, Germany, Holland, Ceylon, Pakistan, Hong Kong, Tunisia and New Zealand. In Spain, Argentina, Costa Rica, Peru, France, Denmark, Scotland, Israel, Morocco, Madagascar and the USA they are inclined to think that it is simple rather than complicated and, finally, the - best reply, that the process is simple, was given by Venezuela, Portugal, Monaco, Sweden, the United Kingdom and Ghana. - Once again, in Belgium, "interdiction" and "administration provisoire" deserve extreme qualifications, apposing each other, since, whereas the first is a complicated process, the second seems to be simple.

Summing up and regarding jointly the three concepts analyzed separately, we see that there are very few countries in which the procedure is deficient in its financial aspect, its duration and complexity, as only in Luxemburg, India, Mauritius I., Canada and Belgium (for interdiction) is it expensive, slow and complicated. But on the best level: free, fast, and simple, only the United Kingdom and Belgium (for "administration provisoire) can be quoted. That is, the nearly all - the procedures that come between the best and the worst fail, not in all, but in one of the aspects analyzed.

Faults of the system and the prospects for change

We asked our correspondents what defects they found in the guardianship systems in force in their countries. We - asked the question quite openly and the replies have been very varied, especially, because, whereas some countries mentioned overall basic problems, others referred to peripheric - - questions. It is therefore virtually impossible to group them together. In all events, if we had to mention any defect as - the mos significant, we would perhaps quote the lack of speci

al legislation (19), the impossibility of grading incapacity, lack of differentiation between demented and handicapped people, the preponderance of guardianship of assets over that of the person, the impossibility of the Societies being able to act as a body corporate and also in some systems, the archaic nature and general inadequacy of the system to meet present-day requirements. In spite of this, we think that it will be more interesting to point out the defects applying to the -- system in each country, instead of putting them into groups, which is impossible without oversimplifying the replies received.

The numbering indicates the order of importance given to each defect in cases where more than one is quoted.

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(19) - The opinion of greatest weight obviously belongs to the people who have completed the questionnaire. We merely limit ourselves to pointing out that lack of special legislation has been indicated to us as a defect in the system.

Spain

1 - The guardianship organization is overcomplicated (guardian, proguardian, family council).

2 - The regulations are insufficient, at times too general. Insufficient distinction is made between degrees of incapacity.

3 - It seems to be a personal guardianship system and so it is difficult for the Societies and body corporates to - intervene, though this would be advisable.

Argentina

1 - The counsel for the defense of minors or judge of minors does not have the financial means at his disposal to solve problems of minors lacking resources.

Costa Rica

1 - It is clumsy and somewhat bound to the rules.

Ecuador

1 - Archaic.

2 - Considers the handicapped person generally without dis-

tinguishing between the demented and the retarded person, although it makes a difference between a drunkard, a drug addict, a squanderer, etc.

The Dominican Republic

1 - I do not feel it has serious defects, but consider that some reforms could be made, like those made in France - by the Law of 3rd January 1968.

Peru

1 - Lack of special family judges.

2 - Non-existence of basic services and institutions. Those in existence are insufficient.

3 - Lack of cooperation of these with the judges of minors.

4 - Lack of precision regarding the competence of judges of minors.

Venezuela

1 - That body corporates cannot be guardians.
2 - Lack of professional guardians.
3 - Lack of cooperation between the Societies and the Judge.

France

1 - Insufficient means placed at the disposal of guardianship judges.

Belgium

1 - Preponderance of protection of assets.

2 - Pragmatism in protecting the person.

3 - Same régime ofr the mentally retarded as for mental patients.

4 - Absence of special legislation.

5 - Lack of specialist opinion.

Luxemburg

1 - That the incapacitation procedure is expensive, slow and complicated and that there is no special protection for mentally retarded adults, nor boarders.

Sweden

1 - The citizen advocacy system has just been established and is still in an experimental stage.

Denmark

1 - In our opinion, we need more people interested in guardianship.

Germany

1 - A guardian for a person of age can be appointed only after this person has been declared legally incompetent - (interdiction).

2 - For mentally handicapped people there is only custody of assets or of people.

3 - The alternative is guardianship or curatorship; there - are no possibilities regarding advocacy.

Holland

1 - To understand in the Dutch legal system the juridical - status of the mentally retarded person (mostly over 21 years of age); the situation now is: the majority of -- them have, from the legal point of view, full capacity but in actual fact are not capable of availing themselves of this power.

2 - Creation of a guardianship system, varying according to the degree of incapacity of each individual subject organized on a decentralized basis alongside the regional health services.

3 - Schemes leading towards the greater involvement of volunteers (like the citizen advocates) in the working of mentally retarded people in society.

India

1 - Not very humane in approach.
2 - Scientifically unsound.

Ceylon

1 - The incapacitation procedure is slow, complicated and costly.

Pakistan

1 - There is no clear law regarding guardianship of the mentally retarded.
2 - A doctor of medicine, expert in legal matter, has to report the case of a mental patient or a deeply deficient person to a Mental Hospital so that he can be declared mentally incapacitated and his own interests may be looked after.

3 - Only after this declaration can a judge arrange to appoint guardianship.
4 - There can be a large number of lawsuits by interested sectors requesting guardianship or ownership.

Israel

1 - Lack of initiative and organization in appointing the parents as guardians of the mentally retarded who have reached the age of 18 years.
2 - Lack of a supervisory body for the custody of people.
3 - Shortage of volunteers to act as guardians.

Tunisia

1 - Guardianship declaration within three days following the natural death of the guardians.
2 - Showing the inventory of assets in the presence of notary publics.
3 - Administrative procedures regarding the settling of assets.
4 - Absence of a permanent UTAIM representative to act along side the guardianship judge.

Morocco

1 - More care is taken of the assets than the person of the handicapped person.

2 - Minors, prodigals and the weak of spirit are placed under the same régime.

3 - Only applied to handicapped persons of the Mohammedan religion.

Mauritius I.

1 - The procedure is antiquated and needs to be simplified and modernized.

Madagascar

1 - Incomplete.
2 - Limited.
3 - Provisional.

Ghana

1 - Our system of advocacy currently operates through the Social Welfare Department and the Society for the Mentally Handicapped, and is in its initial stages.

Australia

1 - The need for uniform legislation throughout the country calls for a revision of all mental health acts in order to differentiate between the mentally retarded and mental patients.

2- The lack of citizen participation to protect the civil - rights of the mentally handicapped.

3 - The general lack of recognition of the fact that the -- mentally retarded should have civil rights.

New Zealand

1 - There should be greater flexibility for there to be more degrees of guardianship rights over the person and the - assets. Currently, once a person needs to be under guardianship, the latter must be complete and is limited to the Public Trustee (Government) and Trustee Companies as to property, and to a "Wardship" of an institution Superintendent or the court for custody of the peron. It should be possible to give wardship custody of the person - to other approved organizations or persons after the Intellectually Handicapped person is over 20 years of age.

U.S.A.

1 - There is no differential level of guardianship for different level of handicapping conditions.

2 - The Guardian's ward has little opportunity for representation in advisory proceeding.

3 - Proceeding in probate rather than in regular court.

4 - Little provision for representation of mentally deficient.

So, although in the majority of cases the criticism indicates the need to reform or make more adequate most of the current guardianship systems, those who state the existence of any indication of the fact that reform is going to take place, are very few; namely: Luxemburg, Sweden, Ceylon, Tunisia, Morocco, and the USA (in some states see Appendix n°3).

Regarding the direction indicated in the modification projects, it would also be useful in this case to quote the exact replies issued by each country, in order to avoid oversimplification. The changes it is endeavoured to make, of which some are quoted somewhat generally and not very precisely, are as follows:

. Tunisia: In the sense of efficiency and safeguarding basic rights.

. Morocco: These projects are still under study within the code on personal statute and personal succession, the code of obligations and contracts and the co-

de on the civil status of foreigners.

. Ceylon: The major part of the civil code procedure, of - - which guardianship legislation is part, is shortly to be combined. A new law on mental health is under way.

. Sweden: The guardian will be paid from public funds if the ward is poor. He will also be paid for the performance of personal services. It will be possible to make use of curatorship not only in the case of temporary illness, but also when greater permanence is required.

. Luxemburg: Reorganization of guardianship generally with - the creation of a guardianship judge and simplification of formalities.
The League's efforts point towards the creation of a prolonged minority for mentally handicapped adults.

. U.S.A.: Although the number of states in which new legislation is proposed predominates (see Appendix N°3) - we can say that in Kansas, the direction mentioned is "covering detention and treating imminently dangerous people", whereas Wisconsin "implies a complete revision of the concept of how to treat mentally handicapped people".

FOUNDATIONS, ORGANISATIONS AND SPECIFIC SOCIAL GROUPS WORKING ON A PRACTICAL OR THEORETICAL LEVEL ON THE GUARDIANSHIP QUESTION

We also asked in the questionnaire for the names - to be included of Foundations, Organisations and Social Groups devoted in one way or another to any type of activity related with guardianship. Judging from the replies received,- the panorama is quite devastating, since of the 37 countries who completed the questionnaire, thirteen do not reply to -- this question and the other eight: Columbia (20), Mexico, --

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(20) - We should mention the point made by Columbia to the - effect that the Foundation for Special Education in - that country, with the assistance of the Ministry of Education and of the Colombian Family Welfare Institute, are going to initiate, according to the words of our correspondent: "a whole guardianship scheme for - the Colombian Mentally Handicapped".

the Dominican Republic, Peru, Monaco, Pakistan, Israel (21), and Ghana, claim that there is no organization or group interested in the question. We should add that in many other cases, it has not been possible to quote other groups or organisations, apart from the Society for the mentally handicapped (22). We do not think that in any case these results can be attributed to the ignorance of the people who have completed the questionnaire, as all of them are in a privileged position in their respective countries to be duly informed on the question.

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(21) - The Bines-Brith which exists in Israel is a Jewish organisation having a special guardianship committee on a voluntary basis, but which until now has not dealt with the mentally retarded.

(22) - There are indeed cases in which the Society is quoted as a group or organisation working on the guardianship question. We should like to point out the possibility that in other cases in which the country's Society has not been quoted, it may have been because the person completing the enquiry considered that its participation was taken for granted, for the fact is that more or less directly all the Societies are involved in some way in the problem. In all events, we must not overlook the fact here that the person replying gives an opinion of value, that is, considers whether the participation of the Societies or other groups is sufficiently efficient to be taken into account and if so, to be quoted as an element which works on the guardianship question.

In all events, we include the list of Institutions which have been quoted in the questionnaire:

Costa Rica

. Patronato Nacional de la Infancia
  Calle 19, Avdas. 6-8. Ap. P. 5.000

Venezuela

. AVEPANE
  6a. Transversal Altamira, N° 21-17
  Apartado de correos 50.583
  CARACAS

France

. Les 28 A.T.I. (Associations Tutélaires d'Inadaptés) créés par l'UNAPEI.

Belgium

. L'Association d'Aide aux Handicapés Mentaux
. Le Conseil Supérieur des Handicapés.

Sweden

. The National Organization for Mentally Retarded Children (FUB).

Germany

. Deutsches Institut fur Vormundschaftswesen
69 Heidelber 1
Zahringer Str. 10

Netherlands (23)

. National Orgaan Zwakizinnigenzorg (Dutch National Covering Association for the Care for the Mentally Retarded)
Maliesingel, 55
Utrecht Tel: 030-31 21 14.

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(23) - This organisation has a Special Committee, which is studying the legal status of the mentally handicapped person in society (Commissie Rechtspositie Zwakzinnige). This committee is currently studying some modifications in the law at the request of the national government, which make it possible for the mentally handicapped of age (21 years and over) benefit - from individualized guardianship. This "guardianship" (in Dutch: ondertoezinchtstelling) would be assessed by the judge for performance by individuals, by organisations or body corporates. This guardianship will be less restricting than the curatorxhip system.

Scotland

. Mental Welfare Commission for Scotland
22 Melville Street
Edinburgh

Tunisia

. L'Union Tunisienne pour l'Aide aux Insuffisants Mentaux
26 rue Sidi Ali Azouz
Tunis - Tunisie

Mauritius Island

. L'Association de Parents d'Enfants Inadaptés de l'Ile Maurice
10 rue du Couvent de Lorette
Curepipe - Road
Ile Maurice (Mauritius Island)

Madagascar

. Les Orchidées Blanches
B.P. 3909
Tananarive - Madagascar

Australia

. The Australian Association for the Mentally Retarded Inc.,
Churchill House, 218 Northbourne Avenue, Braddon
Canberra City, A.C.T. 2601

. Star-Victorian Association for the Mentally Retarded
148 Lonsdale Street,
Melbourne, Victoria, Australia - 3000

. The N.S.W. Subnormal-Children's Welfare Association
8 Junction Street, Ryde,
N.S.W., Australia, 2112

. Australian Council of Social Service
P.O. Box 388, Haymarket, N.S.W. 2000

New Zealand

. Curatorship companies administering the assets of individuals.

. The actual Government corporation and Public Trust Department.

. The Trust Scheme of the Intellectually Handicapped Children's Society.

Canada

. National Institute on Mental Retardation
4700 Keele St.,
Downsview - Ontario

U.S.A.

. N.A.R.C. (National Association for Retarded Citizens)
P.O. Box 61909
Arlington - Texas 76011

APPENDICES

APPENDIX N° 1

List of people who have participated in completing the questionnaires

Spain

1 - Juan Bautista PARDO GARCIA
2 - Magistrado.
3 - Magistrado-Juez de la. Instancia. Decano de Vitoria.
4 - Vicepresidente de la Asociación de Alava. (1)

Argentina

1 - Miguel Angel MARSIGLIA.
2 - Abogado y Doctor en Ciencias Jurídicas y Sociales.
3 - Delegado Organizador de la Universidad Nacional de Entre Rios (Estatal).
4 - Asesor Letrado de la Federación Argentina de Entidades - Pro-Atención al Deficiente Mental. F.E.N.D.I.M.

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(1) - N° 2 indicates the profession; N° 3 the public appointment when it is exercised and n° 4, the appointment -- the person holds in the Society of the corresponding - country, when he belongs to same.

The particulars of those who have completed the inquiry are given in the language of origin as they have -- been sent to us.

The names of the countries are listed according to the order in which the answers to the questionnaires have reached us.

Colombia

1 - Blanca Ines CABAL DE VALLEJO
2 - Psicóloga. Licencia Complementaria en Psicología para el Deficiente Mental. Universidad Católica de Lovaina (Bélgica). Tesis de Master admitida a Doctorado.
4 - Directora Psicopedagógica de la Fundación para la Educación especial, Hospital Infantil Universitaria - Lorencito Villegas de Santos. Bogotá. Colombia.

Costa Rica

1 - Clodomiro MORA ROJAS
2 - Odontólogo
3 - Profesor de la Escuela de Odontología. Universidad de Costa Rica. Presidente del Consejo Nacional de Rehabilitación y Enseñanza Especial.
4 - Presidente de la Asociación Costarricense de Padres de Niños Excepcionales (ACOPANE).

Chile

1 - Fundación Leopoldo DONNEBAUM.

Ecuador

1 - Maria Esther MARTINEZ MACIAS DE PAZMIÑO YCAZA
2 - Abogado
4 - Presidente de la Asociación Ecuatoriana para Niños Retardados (ASNR).

Mexico

1 - Sergio JAIME
2 - Psiquiatra
3 - Director Clínico
4 - Director Clínico.

Dominican Republic

1 - Margarita PEYNADO GONZALEZ
2 - Abogado

Peru

1 - Rolando MANTERO FETZER
Esperanza VALDEZ de DEL BUSTO

2 - Abogado
Abogado

3 - Juez de Menores 1954-1970. Desde 1970 Vocal de la Corte Superior.

Miembro de la Comisión Consultiva de Derecho Tutelar del Colegio de Abogados de Lima. Idem. de Derecho Canónico. Miembro del Consejo Nacional de Menores de 1962 a 1968.

Venezuela

1 - Eugenio GONZALEZ DE LA VEGA Y LOBERA
2 - Abogado
4 - Vice-Presidente - Abogado.

Portugal

1 - Maria da Graça FERREIRA
4 - Secretary

France

1 - Michel LEIBOVICI.
4 - Directeur Général de l'UNAPEI (Union Nationales des Associations de Parents d'Enfants Inadaptés).

Belgium

1 - Carlos VAN MALDEREN
2 - Juge de Paix
3 - Juge de Paix
4 - Administrateur

Luxembourg

1 - Nicolas STOFFEL
Annette Schwall-Lacroix

2 - Inspecteur d'enseignement primaire en retraite. Avocat - avoué.

Monaco

1 - a) Marthe BELLANDO de CASTRO
b) Paule LEGUAY

2 - b) Asistante Sociale auprés du Juge Tutélaire de Monaco.

4 - a) Président de l'Association Monegasque d'Aide et de - Protection de l'Enfance Inadaptée.

Sweden

1 - Allan EVERITT
2 - Lawyer
4 - Secretary General

Denmark

1 - Børge W. OLSEN
4 - General Manager at Evnesvages Vel.

Germany

1 - Emil WEICHLEIN
2 - Lawyer
4 - Legal Adviser

Netherlands

1 - Johannes Bernardus MEIRESONNE.
4 - Directeur Dutch National (Covering)
Association for the Care for the Mentally Retarded

Secretary of the board and executive secretary Dutch Association for the Study of Mental Deficiency.

Secretary of the board (and establisher) Central Foundation for the promotion of the Research in the field of Mental Deficiency and Mental Retardation Care "Bekkers-Institute".

England

1 - Edwin Ronald TUDOR-DAVIES
2 - Statistical Information
3 - Statistical Information Officer
4 - Information Officer to N.S.M.H.C.

Ireland

1 - William J. BERGIN
2 - Retired Army Officer
4 - Secretary

Scotland

1 - Hugh STEWART
4 - Assistant General Secretary

Ceylon

1 - a) Laksiri MENDIS
    b) Vaithianathan SATKUNANAYAGAM

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2 - a) advocate
    b) Psychiatrist

3 - a) Assistant Legal Draftsman
    b) Psychiatrist Mental Hospital Angoda Srilnka

4 - a) N.L.
    b) Executive Committee Member of the Ceylon Association for the Mentally Retarded.

Pakistan

1 - Abdulsattar MUSLIN
2 - Company Director
4 - Founder and Honorary Secretary General.

Indonesia

1 - Agung Yuwono
2 - Social Scientist
4 - Council Member for Social Science

Hong-Kong

1 - Fook Chuen TANG
2 - Education and Social Welfare
3 - Chairman Secretary of Projects for the Mentally Handicapp-d.
4 - Administrative Secretary.

Israel

1 - Isaac Moshe SHEMER
2 - Certified Public Accountant
4 - National Chairman

Tunisia

1 - a) Youssef KAROURI
    b) Bechir BACCAR

3 - a) Directeur de Centre de Réadaptation
    b) Juge au Tribunal de Première Instance

4 - a) Secrétaire Général
    b) Volontaire

Maroc

1 - Hassan ELADUFIR
2 - Magistrat
3 - Procurer près la Cour Suprême

Mauritius Island

1 - Georges André ROBERT
2 - Avoué
4 - Conseiller legal

Madagascar

1 - Georgette RABENORD
2 - Magistrat
3 - Conseiller a la Cour d'Appel
4 - Conseiller juridique

Ghana

1 - Gertrude VARDON
2 - Trained Social Welfare Officer
4 - General Secretary

Australia

1 - Norma RIGBY
2 - Formerly teacher of Mentally Retarded. Now Administrator
4 - Executive Officer

New Zealand

1 - Raymond George MATHEWS
2 - Chartered Accountant. Secretary.
4 - General Secretary

Canada

1 - M. Althea ARMOUR
2 - Librarian
4 - Head, National Reference Service, National Institute - on Mental Retardation.

U.S.A.

1 - a) Marcia Pearce BURGDORF
b) Bruce Warren CALLNER
c) Al SOENNEKER

2 - a) Attny, Project Attny, for NCLH. Ass't. Professor at Univ. of Notre Dame.
b) Legal Intern for National Center for Law and the Handicapped.
c) Staff Member-Council for the Retarded, St. Joseph Co., Indiana.

APPENDIX N° 2

The questionnaire

PRIOR INSTRUCTIONS

. Before answering a question, read carefully the text and consider the different possible ways of answering the question. After doing this, mark with an "X" the block that agrees best with what you wish to express. When it is an open question - and we do not indicate any choice, answer by writting briefly and precisely on the dotted lines.

. Sometimes, depending on how you may have answered a question, the contents of the following question or questions will not concern you. Leave them blank and go on to whatever questions that may apply to you in the text.

. On some questions there are explanatory notes that will help you fill out the survey fully and easily. It is for this reason that you should read absolutely everything that is included in the question.

. Also below some questions there are some squares placed horizontally and indicated only by numbers. Do not be concerned with them. They are there to facilitate our later work in tabulation and arrangement of data.

. The survey is not complicated. In our examination we have -- calculated that to fill out the form suitably requires at the most one hour. Kepp well in mind that if each Society takes - the pains to do this work effectively we will be able to reply on a comparative study of the guardianship situation which will be a great help in analysis and study and, therefore, - will help to solve successfully this guardianship problem that so greatly concerns us.

SURVEY ON GUARDIANSHIP OF THE
MENTALLY RETARDED

FIRST AND LAST NAME OF THE PERSON OR PERSONS WHO ARE FILLING OUT THE FORM.

First Name Last Name

1. .....
2. .....
3. .....
4. .....
5. .....

OFFICE (S) you hold in the Society if you are a member of the same.

(Please use line 1 to apply to the person whose name appears above on line 1, line 2 to apply to the person whose name - appears above on line 2, etc.)

1. .....
2. .....
3. .....
4. .....
5. .....

PROFESSION

(Please do not forget to use the number that corresponds to - the person).

1. .....
2. .....

3. .....
4. .....
5. .....

PUBLIC OFFICE OR OFFICES IF YOU ARE IN CHARGE OF ONE.
(Always use the same line to correspond to the person).

1. .....
2. .....
3. .....
4. .....
5. .....

1. On the matter of guardianship, Does there exist in your country a special legislation for the mentally retarded?. (Keep in mind that the existence of an article in which reference is made to the mentally retarded does not -- meet the requirements of the term special legislation).

YES ☐ 0

NO ☐ 1

If your answer is "Yes" go on to question 2; on the contrary go on to question 4.

2. What is the date of the modification of the general regulation that applies in a special way to the mentally retarded?.

(Please do not use an approximate date if by an inquiry the exact date can be given).

EXACT DATE .....

LATER MODIFICATIONS .....

.....

.....

.....

3. At the time the change was made effective or at the time the regulation was made effective for its special application to the mentally retarded, Where the following persons consulted or were their opinions sought?.

	YES	NO
. Parents of the handicapped and/or their associates.	☐ 0	☐ 4
. Lawyers	☐ 1	☐ 5
. Judges	☐ 2	☐ 6
. Social workers	☐ 3	☐ 7

. Others .....
.....
.....
.....

If any other person or institution that we have not - quoted in the text has been consulted urgently request that you write their names on the dotted lines where - it indicates "Others".

Pass on to question 5.

4. What is the date of the general regulation that governs guardianship?.

(Please do not resort to an approximate date if by inquiry the exact date may be ascertained).

EXACT DATE .....

LATER MODIFICATIONS .....
.....
.....
.....

5. What is in practice the participation of the family - and/or of the Society and/or the State in the guardian ship organization?.

	FAMILY	SOCIETY	STATE
. Active	☐ 0	☐ 3	☐ 6
. Little or indirect	☐ 1	☐ 4	☐ 7
. Null	☐ 2	☐ 5	☐ 8

6. Does there exist in your country, besides guardianship, curatorship, citizen advocacy or other similar system?.

YES ☐ 0

NO ☐ 1

If your answer is "Yes", go on to the following question 6.1., if not, pass on to question 7.

6.1. List them for us:

0 .....

1 .....

2 .....

3 .....

7. Explain briefly as possible the difference that exists in your country between the custodianship of possesions and that of persons.

.....
.....
.....
.....

0 1 2 3

8. Does there exist in your country the representation of a judge completely and exclusively devoted to the question of guardianship?

YES ☐ 0

NO ☐ 1

0 1 2

9. Does the judge have available sufficient means and advi ce to see that the guardianship functions properly?.

. Yes he does have sufficient means and advice. ☐ 0

. Although he does not have sufficient means and advice, neither can it be said that he completely lacks them. ☐ 1

. He completely lacks means and ad vice. ☐ 2

(If you have marked square 2, go on to the question 9.2., - otherwise answer the following question 9.1.).

9.1. What are these means and of what does the advice consist?. Explain briefly.

.....
.....
.....

0	1	2	3

9.2. Does the judge depend on a professional staff with counselling functions and dedicated to see that the guardianship functions properly?.

. YES	☐	0
. NO	☐	1

9.3. Do the Societies cooperate with the judge and/or with the staff if such existis?.

. YES	☐	0
. YES but not very closely	☐	1
. NO	☐	2

10. Can the Societies for the protection of the mentally deficient act in the capacity of bodies corporate exercising the functions of advocates?.

. YES	☐	0
. NO	☐	1

11. In your country, do professional tutors or guardians exist?.

. YES ☐ 0

. NO ☐ 1

(If you have marked square "0" go on to the following question 11.1., if not pass on to question 12).

11.1. If in your country the professional tutor or guardian exist, please tell us by what funds he is remunerated.

. By the State ☐ 0

. By the Municipality ☐ 1

. By the Society ☐ 2

. By the ward or his/her family ☐ 3

. Others .....
.....
.....

(On the dotted lines under the word "Other" please indicate the possible cases not quoted by us. If more than one way of compensation exists, please indicate each one of them, marking an "X" in the corresponding square, or on the dotted lines indicate the name of the Institution, Organization, or persons that contribute).

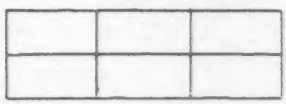
11.2. Whatever may be the case, does the tutor's or guardians fee bear any relation to the ward's financial status?.

. Yes ☐ 0

. NO ☐ 1

11.3 What type of relation? Explain briefly.

.....
.....
.....



11.4 Often the term "professional" is not to be taken to be synonymous with "specialist", for this reason we ask, Does there exist in your country any kind of specific type of process for those who exercise guardianship in a professional manner?.

. YES ☐ 0

. NO ☐ 1

12. What proportion of the mentally deficient do you calcu late are incompetent and are under advocate proceedings?.

. All	☐ 0
. Nearly all	☐ 1
. The majority	☐ 2
. Aproximately half	☐ 3
. Less than half	☐ 4
. Few	☐ 5
. Very few	☐ 6
. None	☐ 7

13. Check the square that best describes the procedure in your country for declaring a person legally incompetent according to your judgement.
(Do not fail to read the three columns).

I		II	
. It is a costly pro cedure	☐ 0	. Very slow procedu re	☐ 4
. Neither expensive nor cheap	☐ 1	. Fairly slow proce dure	☐ 5
. Cheap	☐ 2	. More or less ra- pid	☐ 6
. Free	☐ 3	. Rapid	☐ 7

III

. Complicated ☐ 8

. Fairly complicated ☐ 9

. Simple rather than complicated ☐ 10

. Simple ☐ 11

14. Do you know of Foundations, Organizations, specific social groups, in your country, that work on a practical and theoretical level regarding the guardianship?.

(If you know of such list their names and addresses, - writting first the name followed by the address).

.....
.....
.....
.....
.....
.....

15. Would you list the shortcomings that you find in the - present advocate system in your country.

(Please quote them as they come to your mind, and then place them in order of importance).

0 .....
1 .....
2 .....
3 .....

16. Is there any prospect of a bill to modify the legislation on the guardianship matter?.

. YES ☐ 0

. NO ☐ 1

(If your answer is "Yes", go on to question 16.1. If not you can consider this survey completed). Thank you.

16.1. What is the intent of the proposed projects?.
Try to explain them briefly.

.....
.....
.....
.....

0	1

You may consider the survey completed. THANK YOU.

APPENDIX N° 3

Summarized table of the

U.S.A. situation

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
1. Code of Alabama, Title 21, Guardian and Ward	Yes	July 2, 1940	Sept. 19, 1971	Yes	No	Yes	--
2. Alaska Statutes, Title 13, Guardianships and Trusts	Yes	Jan. 1, 1973	None	Yes	No	Yes	--
3. Arizona Revised Statutes, Sec. 14, Guardian and Ward	Yes	1956	1961	Yes	No	Yes	--
4. Arkansas Statutes, Title 57, Chapter 6, -- Guardianship	Yes	1949	1961	Yes	No	Yes	--
5. Annotated California Code, Probate Code, Div. 4	Yes	May 11, 1931	1969	Yes	No	Yes	--
6. Canal Zone Code, Part 5, Guardian and Ward	Yes	1934	June 22, 1968	Yes	No	Yes	--
7. Colorado Revised Statutes Annotated, Chapter 153, Article 9, Guardians and Conservators	Yes	1963	1971	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
8. Connecticut General Statutes Annotated, Chapter 777, Guardian and Ward	Yes	Jan.15, 1959	May 30 1972	Yes	No	Yes	--
9. Delaware Code, Chapter 37, Trustees for Mentally Ill Persons	Yes	Feb.12, 1953	Dec.12, 1963	Yes[1]	No	Yes	--
10. District of Columbia Code, Title 21, Fudiciary Relations in The Mentally Ill.	No	None	None	None[2]	None	None	--
11. Florida Statutes Annotated, Title 42, Chapters 744-747. Guardianship	Yes	Nov.27, 1963	July 1 1972	Yes	Yes[3]	Yes	--

(...)

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(1) - The guardian in this jurisdiction has considerably greater power than the general or special guardian of other jurisdictions. The guardian over the person in Delaware appears to have complete power.

(2) - The guardianship statute covering minors is not extended to cover incapacitated persons.

(3) - Over property only.

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
12. Georgia Code Annotated, Title 49, Guardian and Ward	Yes	1965	1972	Yes	No	Yes	--
13. Probate Code of the Territory of Guam, Chapter IV, Appointment of Guardian for Insane or Incompetent Persons	Yes	1953	Feb.16, 1968	Yes	No	Yes	--
14. Hawaii Revised Statutes, Title, 30, Guardians and Trustees	Yes	Oct.31, 1968	July 1, 1973	Yes	No	Yes	--
15. Idaho Code, Title 15, Protection of Persons Under Disability and Their Property	Yes	1971	1972	Yes	No	Yes	--
16. Illinois Statutes Annotated, Chapter 3, Article XI, Guardians	Yes	Jan. 1, 1940	Sept.11, 1973	Yes	No	Yes	--
17. Burn's Indiana Statutes Annotated, Title 29, Article 1, Sec.8, Guardianship	Yes	1953	1972	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
18. Iowa Code Annotated, Chapter 633, Guardianships-Conservatorships	Yes	Jan. 1, 1964	1972	Yes	No	Yes	--
19. Kansas Statutes Annotated, Title 59, Article 30, Guardians or Conservators	Yes	Jan. 1, 1966	--	Yes	No	Yes	Yes[4]
20. Kentucky Revised Statutes, Chapter 387, Guardians, Committees Curators of Convicts	Yes	March 5, 1942	Sept.1, 1968	Yes	Yes[5]	Yes	--
21. Louisiana Statutes Annotated, Common Code, Title IX, Of Persons Incapable of Administering Their Estates, Whether on Account of Insanity or Some Other Infirmity, and of Their Interdiction and Curatorship.	Yes	1950	1966	Yes	Yes[6]	Yes	--

(...)

---

(4) - Covering detention and treatment of "imminently dangerous persons."

(5) - Over property only.

(6) - This is an extensive curatorship. However, in this jurisdiction the term is used synonymously with guardian.

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
22. Missouri Revised Statutes Annotated, Title 18, Part 5, Fiduciary Relations.	Yes	Dec.31, 1964	1969	Yes	No	Yes	--
23. Annotated Code of the Public General Laws of Maryland, Article 93A, Protection of Minors and Other Persons Under Disability	Yes	July 1, 1969	July 1, 1973	Yes	No	Yes	Yes
24. Annotated Laws of Massachusetts, Part II Title II, Chapter 201 Guardians and Conservators	Yes	1968	June 19, 1972	Yes	No	Yes	--
25. Michigan Statutes Annotated, Title 27, Chapter III, Guardians and Wards	Yes	Dec.31, 1961	June 16, 1972	Yes	No	Yes	--
26. Minnesota Statutes Annotated, Chapter 525, Guardianships	Yes	1935	May 28, 1971	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
27. Mississippi Code Annotated, Title 14, Chapter 2, Guardian and Ward	Yes	1942	July 1, 1972	Yes	No	Yes	--
28. Vernon's Annotated Missouri Statutes, Chapter 475, Guardianship	Yes	Jan. 1, 1956	1959	Yes	No	Yes	--
29. Revised Codes of Montana, Title 91, Chapter 47, Guardians of Insane and Incompetent Persons	Yes	1921	1953	Yes	No	Yes	--
30. Revised Statutes of Nebraska, Chapter 38, Article 2, Guardian and Ward	Yes	1943	1949	Yes	No	Yes	--
31. Nevada Revised Statutes, Title 13, Guardianships, Conservatorships, Trusts	Yes	1969	None	Yes	No	Yes	--
32. News Hampshire Revised Statutes Annotated. Title XLIV, - Chapter 464, Guardians and Conservators	Yes	May 2o, 1947	Sept.5, 1971	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
33. New Jersey Statutes Annotated, Title 3A, Article 3, Mentally Incompetency	Yes	Jan.1, 1952	Sept. 4, 1968	Yes	No	Yes	--
34. New Mexico Statutes Annotated, Chapter 32, Guardian and Ward	Yes	1953	1972	Yes	No	Yes	--
35. New York, Article 17, Guardians and Custodians	Yes	May 8, 1967	May 26, 1969	Yes	No	Yes[7]	--
36. General Statutes of North Carolina, Chapter 35, Persons with Mental Diseases and Incompetence	Yes	1945	Oct. 1, 1971	Yes	No	Yes	--

(...)

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(7) - Custodian is used synonymously with conservator.

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
37. North Dakota Century Code Title 30, Chapter 10, Guardianship	Yes	1943	1973	Yes	No	Yes	--
38. Page's Ohio Revised Code, Title 21, Chapter 2111, Guardians	Yes	Oct. 25, 1961	Jan. 1, 1971	Yes	No	Yes	Yes
39. Oklahoma Statutes Annotated, Title 58, Chapter 14, Guardian and Ward	Yes	1961	None	Yes	No	Yes	--
40. Oregon Revised Statutes, Title 13, Chapter 126, Guardianship Conservatorships and Trusts	Yes	1953	1969	Yes	No	Yes	Yes
41. Pennsylvania Statutes Title 50, Chapter 11, Incompetent's Estates Act of 1955	Yes	1955	July 1, 1971	Yes	No	Yes	--
42. Laws of Puerto Rico Annotated, Title 32, Part II, Actions Concerning Minors and Incapacitated Persons	Yes	June 4, 1954	None	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
43. General Laws of Rhode Island Annotated, Title 33, Chapter 15 Guardians and Conservators	Yes	1956	1970	Yes	No	Yes	--
44. Code of Laws of South Carolina Annotated, - Title 31, Guardian - and Ward	Yes	1962	1971	Yes	No	Yes	--
45. South Dakota Compiled Laws Annotated, Title 30, Probate and Guardianship Procedure	Yes	1967	None	Yes	No	Yes	--
46. Tennessee Code Annotated, Title 33, Mentally Ill and Mentally Retarded Persons.	Yes	1965	None	Yes	No	Yes	--
47. Vernon's Annotated Revised Civil Statutes of the State of Texas Title 17B, Chapter IX, Specific Provisions Relating to Persons of Unsound Mind and Habitual Drunkards	Yes	Jan, 1, 1956	Jan. 1, 1972	Yes	No	Yes	--

(...)

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
48. Trust Territory of the Pacific Islands	No	None	None	None	None	None	--
49. Utah Code Annotated Title 75, Chapter 13 Guardianship	Yes	1953	1971	Yes	No	Yes	--
50. Virgin Islands Code Annotated, Title 15, Chapter 51, Guardians and Wards	Yes	May 6, 1957	None	Yes	No	Yes	--
51. Code of Virginia Annotated, Title 37.1, Institutions of the Mentally Ill; Mental Health Generally	Yes	1950	1971	Yes	No	Yes	--
52. Revised Code of Washington Annotated, Title 71, Mental Illness and Inebriacy	Yes	1961	1971	Yes	No	Yes	--
53. West Virginia Code - Annotated, Title 44, Article 10, Guardianship	Yes	1966	1971	Yes	Yes[8]	Yes	--

---

(8) - Curators are the same as guardians, however, the guardian is appointed on court initiative, the curator volunteers.

	Special legislation	Date of adoption	Last date of modification	Guardianship	Curatorship	Conservator	Proposed legislation
54. Wisconsin Statutes Annotated	Yes	1969	1973	Yes	No	Yes	Yes[9]
55. Wyoming Statutes Annotated, Title 3, Article 2.1, Guardianships for Mental Incompetents or Incompetnts	Yes	1965	None	Yes	No	Yes	--

(9) - Proposed legislation involves a complete revision of the concept of how to deal with mentally handicapped persons.

APPENDIX N° 4

Dates of general and special guardianship legislations

COUNTRIES HAVING SPECIAL GUARDIANSHIP LEGISLATION

Countries	Exact date of general regulations or rules	Subsequent modifications
. Argentina	1st July 1968	None
. France	3rd July 1968	"
. Belgium	29th June 1973	"
. Denmark	5th June 1959	"
. The United Kingdom	1959	"

COUNTRIES WITH NO SPECIAL GUARDIANSHIP LEGISLATION

Countries	Exact date of general regulation or rules	Subsequent modifications
. Spain	24th July 1889	24th April 1958 (eliminating certain civil differences for reasons of sex there by extending the intervention of the woman in guardianship).
. Costa Rica	30th July 1841 (Civil Code)	1888 and 1952
. Ecuador	1st January 1861	The last substantial modification on 20th November 1970.
. Dominican Republic	1845	None
. Peru	2nd May 1962. Minors Code law 13 968	. 18-3-1969: Health Code D.L. 17505 . 24-4-1973: National Pensions System. D.L. 19990.

(...)

Countries	Exact date of general regulations or rules	Subsequent modifications
. Venezuela	8th October 1940 Civil Code	30-12-1949. Minors Statute also establishes and regulates State - guardianship for minors in irregular situation.
. Luxemburg	Code of Napoleon 1803	7-7-1880 on the regime of the deranged.
. Monaco	21st July 1970 Law n°892	None
. Sweden	10th June 1949	None
. Germany	18th August 1896	19th August 1969
. Holland	1st October 1838	Civil Law Book from 1843 to 1-1-1970
. Ceylon	1st August 1890	None
. Scotland	1960 (Mental Health Act)	1968 (Social Work - Act)
. Hong Kong	Guardianships of Minors 1951.	None

(...)

Countries	Exact date of general regulations or rules	Subsequent modifications
. Israel	7th August 1962	. 18-3-1965 . 30-7-1970
. Tunisia	12th November 1918	13-8-1956: Article 160 of the Personal Status Code.
. Morocco	On the origins of Musulman Law	Coding took place in January 1958.
. Mauritius	1805	1906
. Madagascar	20-11-1963 (only for minors)	None
. Australia	1963 (Mental Health Act for the State of Tasmania)	None
. New Zealand	1968	1971

APPENDIX N° 5

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APPENDIX N° 6

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Legislative sources on Guardianship matters (*)

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(*) - To complete, see Appendix n° 4.

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United States

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France

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England

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Yugoslavia

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